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In the Supreme Court of the United States

OCTOBER TERM, 1928

PARAMOUNT FAMOUS LASKY CORPORATION ET AL.,
APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION BY THE UNITED STATES TO ADVANCE

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No. 820

PARAMOUNT FAMOUS LASKY CORPORATION ET AL., appellants

v.

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MOTION BY THE UNITED STATES TO ADVANCE

The Attorney General pursuant to Rule 20, paragraph 6, of this Court moves to advance the above-entitled case for a hearing as near the 27th day of October, 1930, during the next term of Court, as may be convenient.

This is a suit in equity by the United States under the Act of July 2, 1890 (26 Stat. 209), known as the Sherman Antitrust Act. The defendants named are ten corporations engaged in the distribution of motion-picture films to theatre owners throughout the United States, the Motion Picture Producers and Distributors of America, Inc., a New York member-

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ship corporation having a "Class B" membership composed of the defendant distributors, and the thirty-two Film Boards of Trade maintained by the defendant distributors and other distributors of motion picture films in the thirty-two principal cities of the United States. The petition alleges that the defendants are engaged in a combination and conspiracy in restraint of interstate trade and commerce in motion-picture films.

The petition alleges, among other things, that:

1. The defendant distributors distribute approximately sixty per cent of the motion-picture films distributed annually in the United States, and the membership of each defendant Film Board of Trade represents practically every distributor of motion-picture films in the territory in which the Board operates. The members of the defendant Film Boards of Trade distribute approximately ninety-eight per cent of the motion-picture films distributed annually in the United States, and it is impossible for any motion-picture theatre to secure motion-picture films for its regular operation without dealing with one or more members of the particular Film Board of Trade in the territory in which said theatre is located.

2. The defendant distributors have agreed with each other to coerce and require every exhibitor of motion-picture films in the United States (*a*) to submit to arbitration any question or dispute with any member of any defendant Film Board of Trade arising under any contract licensing the exhibition of motion pictures, (*b*) to waive the right to a judicial

determination of any such question or dispute, and (*c*) to comply with any award rendered against him in any such arbitration proceeding without recourse or appeal to the courts.

3. To accomplish the foregoing purposes and objects, the defendant distributors have from time to time agreed upon certain uniform or standard forms of contract for licensing the exhibition of motion pictures in the United States and have agreed with each other that each will incorporate all of the provisions of these uniform or standard forms of contract in every contract made by it for such licensing. Said uniform or standard forms of contract require all claims and controversies arising thereunder to be submitted to Boards of Arbitration established pursuant to, and operating under, rules and regulations prepared by the defendant distributors. The defendant distributors have collectively refused to deal with an exhibitor who fails to comply with the arbitration provisions of the contracts.

The District Court held that exhibitors who were not represented in the adoption of the uniform contracts have been constrained, by agreement of defendant distributors, to accept the arbitration provisions of these contracts, and have been constrained to perform the contractual obligations thus assumed by the compulsory system of arbitration, sanctioned and enforced by the collective action of the distributors, and that such coercive restraint upon the business of exhibitors was undue and unreasonable and in violation of the Sherman Act.

The District Court on January 22, 1930, entered a final decree perpetually enjoining the defendants from enforcing the arbitration provisions of their contracts with exhibitors and from engaging in any other conspiracy similar to or having the same purpose or effect as the conspiracy therein adjudged illegal. The decree, however, permits the making of any contracts, with or without provisions relating to arbitration, provided such contracts are made individually and without combining, conspiring, or agreeing with any other defendant or any member of any Film Board of Trade. The petition of the defendants for an appeal to this Court was allowed on March 21, 1930.

An early decision by this Court upon this appeal is of general public interest:

(1) Because this Court has not heretofore determined the legality of collective action by members of an industry to compel those who deal with them to submit all claims and controversies concerning contractual obligations to an agreed method of arbitration;

(2) Because final determination of the issues herein will affect many of the several hundred thousand contracts entered into annually between distributors and exhibitors of motion pictures in the United States.

Opposing counsel concur in the motion that the case be advanced.

WILLIAM D. MITCHELL,
Attorney General.

MAY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930